CURRENT LEGISLATION

FARMERS' COÖPERATIVE ASSOCIATIONS.[1]—Probably no better indication of the newly awakened public interest in the problems confronting the farmers[2] can be found than the numerous recently enacted statutes dealing with markets, marketing facilities, and credit. Much of this legislation authorizes the formation of agricultural coöperative associations, and indicates the adoption by legislators of the theory that in intelligent coöperation among the farmers lies the best solution of their problems.

It is generally conceded that in the United States farming has participated but little in the modern processes of commercialism,—at least with regard to centralization of control and the coöperative idea.[3] Broadly speaking, farming remains as individualistic to-day as it was a century ago.[4] The farmer is merely a producer. He has comparatively weak credit, and poor warehousing and marketing facilities. There are other groups, *e. g.*, middlemen, whose extensive machinery for handling the crop enables them to take advantage of the weak bargaining position of the farmer by obtaining his products at their own prices for distribution.[5] Because of their ability to adjust supply to demand, they also enjoy a strong bargaining position with reference to the consumer.[6] The farmer, therefore, gets but an inadequate share of the ultimate price of his product. This situation has led to the movement for "coöperative marketing associations,"[7] whereby the farmers themselves shall control warehousing and credit, and market their own products.[8]

In practically all European countries, the farmers have well-organized coöperative marketing associations.[9] In the United States, it is only within very recent years that it has been deemed of sufficient importance to sanction by legislation such associations. The national associations[10] are as yet too young for their usefulness to be conclusively established, but in several of the states, state-wide organizations have proved successful.[11] Indeed, at least twelve

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[1] Other types of legislation directly dealing with warehousing and financing the crop, are beyond the scope of this note.

[2] For a general treatment of these problems, see Duncan, *Marketing: Its Problems and Methods* (1921); Weld, *The Marketing of Farm Products* (1921); Hibbard, *Marketing Agricultural Products* (1921).

[3] See Weld, *op. cit.* c. 19, esp. 412-23.

[4] See speech by Senator Capper of Kansas, Dec. 20, 1921, Congr. Rec. 67th Congr. 2d Sess. No. 14, pp. 676-79.

[5] *Systems of Marketing Farm Products at Trade Centers*, U. S. Dept. of Agri. Rep. No. 98, contains outlines of various organizations for the marketing of farm products. See also Weld, *op. cit.* 24.

[6] For a discussion of the middleman, see Duncan, *op. cit.* §§ 72, 73.

[7] For the tendency to eliminate the middleman, see *ibid.* §77.

[8] See the resolutions adopted by the National Agricultural Conference, called by Secretary of Agriculture Wallace at Washington, D. C., Jan. 23, 1922. An outline of these resolutions is found in (1922) 15 Agricultural Rev. No. 2.

[9] See 1 Smith-Gordon & O'Brien, *Coöperation in Many Lands* (1919) cc. 5, 6; Faber, *Coöperation in Danish Agriculture* (1918); Gebhard, *Coöperation in Finland* (1916); *The People's Year Book* (1921) 335-53.

[10] An outline of some of the more important coöperative associations is found in 1922) 15 Agricultural Rev. No. 2. The U. S. Grain Growers Inc. and the Farmers' Union, are two conspicuous examples of national coöperative associations.

[11] This has been especially true in Minnesota and California. For a discus-

states,[12] within the past year, have enacted statutes authorizing the formation of farmers' coöperative associations. Very recently, too, Congress has passed a similar law,[13] in respect to farmers engaged in interstate or foreign commerce. These laws, which are likely to initiate a new era in our agricultural history, contain provisions of considerable interest in connection with the legal problems of combination.

Most of the state acts[14] are identical, evidently inspired from some single source. The act is generally called the "Coöperative Marketing Act," and its purpose is "to promote and encourage the intelligent and orderly marketing of agricultural products through coöperation."[15] It contains a provision to the effect that the association is to be a non-profit association; and that it may engage in any activity in connection with marketing, selling, harvesting, shipping of agricultural products, or financing these activities.[16] To preserve the association as a distinctly coöperative plan for the benefit of the farmers individually, it is generally provided that each member shall have but one vote;[17] that each member must be engaged in producing agricultural products;[18] that transfer of common stock to one not engaged in producing agricultural products, is forbidden;[19] that dividends shall not exceed eight per cent;[20] that no member shall own more than twenty per cent of the stock;[21] that no association shall handle the products of a non-member;[22] and that the association may borrow money and make advances to its members.[23]

Two provisions of these state laws, however, are especially the subject of controversy. The first authorizes the association and its members to enter into "marketing contracts," whereby the members are required to sell, for any period not over ten years, all or any specific part of their agricultural products to or through the association, the association to pay back to the members the resale price of the products, minus reasonable expenses, etc.[24] The statutes also provide for an injunction to lie against any member in case of breach of this "marketing contract."[25]

It has been urged against these contracts that: (1) Such a contract of "exclusive sale" is in restraint of trade and therefore against public policy; (2) injunctive relief should not be given because specific performance against the producer would involve "long and continuous acts of supervision" by the court. As to the first point, it has been held that such marketing contracts are not prima

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sion of the Minnesota associations, see remarks by Senator Kellogg of that state, Feb. 2, 1922, Congr. Rec., 67th Congr. 2d Sess. No. 42, pp. 2292-94; also, Weld, *op. cit.* 414-19. Probably the best example of a successful coöperative association is the California Fruit Growers' Exchange. For a discussion thereof, see (1919-20) 8 California Law Rev. 281-99; Duncan, *op. cit.* § 111, p. 154.

[12] Ariz., Ark., Ga., Idaho, Iowa, Kan., Mont., N. C., N. Dak., Ohio, Tex., Wash. Samples of earlier statutes favoring coöperative marketing, are: Ala., Acts 1909 (Sp. Sess.), 168; Ky., Acts 1918, c. 159, p. 662; Ky., Acts 1906, c. 117, p. 429.

[13] The Agricultural Coöperative Association Act ("Capper-Volstead Act"), Pub. Act No. 146, 67th Congr., H. R. 2373, which became law on Feb. 18, 1922.

[14] Ariz., Sess. Laws 1921, c. 156, p. 373; Ark., Gen. Acts 1921, No. 116, p. 153; Ga., Laws 1921, p. 139; Idaho, Sess. Laws 1921, c. 124, p. 298; Iowa, Laws 1921, c. 122, p. 118; Kan. Laws 1921, c. 148, p. 223; Mont., Laws 1921, c. 233, p. 497; N. C., Pub. Laws 1921, c. 87, p. 342; N. Dak., Laws 1921, c. 44, p. 87; Tex., Gen. Laws 1921 (Reg. Sess.), c. 22, p. 45; Wash., Laws 1921, c. 115, p. 357.

[15] See Ga., Laws 1921, p. 139. Due to the similarity of the statutes, only one citation will be given for these provisions.

[16] Idaho, Sess. Laws 1921, c. 124, § 4.

[17] Kan., Laws 1921, c. 148, § 13.

[18] Idaho, Sess. Laws 1921, c. 124, § 7. [19] *Ibid.* § 14.

[20] *Ibid.* § 17. This in spite of the provision that the association is non-profit.

[21] *Ibid.* § 14. [22] *Ibid.* § 6. [23] *Ibid.* [24] *Ibid.* § 17. [25] *Ibid*

facie void as against public policy.[26] Contracts of this type are not necessarily invalid merely because they tend toward factual restraint of trade.[27] It is always a question of balancing conflicting social and economic policies.[28] Indeed, public policy and trade might well be advanced, for the object of the farmers' association is to eliminate the middleman, secure direct distribution, and obtain for the producer a more proportionate share of the ultimate price of his product.[29] Nor is the second objection insuperable. The fact that specific performance may entail considerable supervision by the court, is not a jurisdictional bar to injunctive relief. The question is purely one of expediency,[30] and in the case of such marketing contracts, supervision is not difficult.[31]

Another common provision which has met with objection allows two or more associations to make agreements necessary for coöperation, to unite when necessary,[32] and allows one association to become a member of another association.[33] It is argued that this provision encourages monopolies in that it allows the smaller associations to combine and become parts of one large unit for the control of all the products of a particular kind and their prices. Whatever the theoretical merits of this contention, there is, in practice, little danger of an agricultural monopoly,[34] so long as the association is only state-wide in its operation. The federal act, indeed, expressly provides against harmful monopolies.[35] Ohio, for the same purpose, places the association under the supervision of the Public Utilities Commission.[36]

Section 1 of the federal act[37] authorizes coöperative marketing associations,

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[26] *Bullville Milk Producers' Ass'n* v. *Armstrong* (1919) 108 Misc. 582, 178 N. Y. Supp. 612; *aff'd,* (1920) 190 App. Div. 952, 180 N. Y. Supp. 932.

[27] *Newell* v. *Meyendorff* (1890) 9 Mont. 254, 23 Pac. 333.

[28] See Kales, *Contracts and Combinations in Restraint of Trade* (1918) §§ 26-30; 60-62; *cf.* § 92.

[29] Some statutes expressly state that the coöperative marketing association is not a combination in restraint of trade or an illegal monopoly, and that the "marketing contracts" shall not be considered illegal or in restraint of trade. Ga., Laws 1921, p. 153, § 23; N. C., Pub. Laws 1921, c. 87, § 26; Tex., Gen. Laws 1921 (Reg. Sess.), c. 22, § 26.

[30] *Texas Co.* v. *Central Fuel Oil Co.* (C. C. A. 1912) 194 Fed. 1 (*semble*).

[31] See (1920-21) 9 California Law Rev. 44-55.

[32] Kan., Laws 1921, c. 148, § 20.

[33] Ga., Laws 1921, p. 142, § 5.

[34] In Europe, where coöperation has been most extensively practiced, all attempts to create agricultural "trusts" have failed. See speech of Senator Capper, *supra,* footnote 4, p. 678. The same result would be expected in the United States. The very weight of the organization, coupled with the geographical decentralization of the producers, would likely break it down. One of the largest of our present associations, the U. S. Grain Growers' Inc., is already experiencing much difficulty in keeping the organization from breaking down because of the conflicting interests of different groups of farmers. See (1922) 15 Agricultural Rev. No. 2. To be most successful, practical experience has shown that the coöperative association must be limited to farmers of one district, and confined to one crop, or products of some uniformity. See Hibbard, *op. cit.* pt. III.

[35] § 2.

[36] Ohio, Laws 1921, p. 50. In other respects this statute is almost identical with the federal act. Most of the statutes make it criminal to spread false reports about the association, or to persuade a member to break his contract. *E. g.,* Kan., Laws 1921, c. 148, § 22; Idaho, Sess. Laws 1921, c. 124, § 24. Montana has an interesting statute authorizing creation of coöperative corporations, empowered to contract debts secured by first mortgage on the land of its members, all of whom must be landowners. Mont., Laws 1921, c. 152, p. 217. Another state adopts an unusual method of providing credit for groups of farmers based on their collective responsibility. Wash., Laws 1921, c. 121, p. 384. Under this "Crop Credit Act," associations may borrow to lend to their members on notes which are the general obligation of all members, secured in effect by the crops of all the borrowing members.

[37] *Supra,* footnote 13.

"provided, however, that such associations are operated for the mutual benefit of the members thereof." The section, while not as explicit as the similar section found in the state acts,[38] nevertheless apparently authorizes the same type of "marketing contract" between members and association, and also, agreements between various coöperative associations. The federal act, however, is unlike the state statutes in that it does not prohibit the association from dealing in products of non-members, but only limits such products to an amount not "greater in value than such as are handled by it for members."

A most important feature of the federal act is Section 2, which provides that the secretary of agriculture shall have supervision over the associations. He may hold hearings to determine whether an association monopolizes or restrains trade so as unduly to enhance prices, and if he so finds, he may order the association to cease from such restraints. The procedure prescribed for the hearing and for appeals therefrom, is markedly similar to that provided in the Packers' Act and has the same advantages.[39] An agricultural monopoly in undue restraint of interstate or foreign trade would be the chief danger to be feared from a farmers' coöperative association, which, under the federal act, could be nation wide in scope.

That the consumer has not been overlooked in the recent farm legislation is evidenced by the goodly number of statutes specifically establishing standardization of products.[40] Standardization, however, has also been reached as an incident of the coöperative association.[41] A more comprehensive appreciation of the possibilities of the coöperative idea is unquestionably to be desired.

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[38] *Supra,* footnote 24.

[39] See (1922) 22 COLUMBIA LAW REV. 68-72. The farm act, moreover, has a possible added advantage, in that, on appeal to the District Court, "the facts found by the Secretary . . . shall be prima facie evidence of such facts."

[40] California enacted an elaborate "fruit and vegetable standardization act," the statute itself fixing the standards. Cal., Stat. 1921, c. 719, p. 1234. Colorado requires the director of markets to establish and enforce compulsory standards. Colo., Sess. Laws 1921, c. 173, p. 583. Other states have likewise enacted legislation for the inspection and grading of products. Utah, Laws 1921, c. 113, p. 312; N. J., Laws 1921, c. 83, p. 134; Ore., Gen. Laws 1921, c. 206; also Porto Rico, Laws 1921, c. 14, p. 122.

[41] This has been proved in Denmark, and in the accomplishments of the California Fruit Growers' Exchange and other associations in the United States. See Weld, *op. cit.* 410.